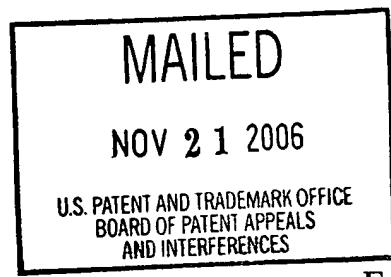


UNITED STATES PATENT AND TRADEMARK OFFICE



BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEVEN BARRITZ and ROBERT BARRITZ

Application No. 09/766,438

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences (BPAI) on November 8, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

Appellants filed an Appeal Brief on December 12, 2005. 37 CFR § 41.37(c)(1)(v)) states in part:

The brief shall contain the following items under appropriate headings and in the order indicated below . . .

(5) *Summary of invention.* A concise explanation of the invention defined in the independent claims involved in the appeal which shall refer to the specification by page and line number and to the drawings, if any by reference characters.

The brief is defective for the following reason:

The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any by reference characters, and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. § 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and the drawings, if any, by reference characters (37 CFR § 41.37(c)(1)(v)).

Appellants “V. SUMMARY OF THE CLAIMED SUBJECT MATTER” does not sufficiently map the subject matter of the independent claims (1 and 39) to its location in the specification and/or drawings as outlined above. A substitute brief containing a more detailed Summary of the Claimed Subject Matter is required.

Accordingly, it is

ORDERED that the application is returned to the Examiner:

- a.) to hold the Appeal Brief filed December 12, 2005, defective for the above reason and notification to appellants to file a substitute Appeal Brief in compliance with 37 CFR § 41.37(c)(1)(v) as noted above;
- b.) for consideration of the substitute Appeal Brief, and
- c.) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: G. P. Geur for Dale Shaw
DALE M. SHAW
Acting Chief Appeals Administrator
(571) 272-9797

DMS/vsh

cc: OSTROLENK, FABER, GERB & SOFFEN
1180 AVENUE OF THE AMERICAS
NEW YORK NY 10036-8403